

## Montana Petroleum Association concerns submitted to DEQ

- The State of Montana is under no present legal compulsion to adopt numeric nutrient standards, but a well-considered and comprehensive program that includes numeric standards could provide a foundation for continuing protection of Montana waters while taking into account available technology and economic impacts to Montana businesses and communities.
- Development of a comprehensive plan and rule package for implementation, and specifically for permitting, is an essential prerequisite to adoption of numeric nutrient standards. It is critical that any rule package including numeric nutrient standards also provide clear steps for permitting and compliance that take account of the resources required of both DEQ and applicants for permitting, so as to avoid either extended periods of uncertainty or lengthy back-logs and delay.
- Numeric standards for nutrients being discussed at present are very stringent, and it is acknowledged that these could not be achieved by more than a few sources within Montana at this time using available technology and absent extraordinary cost. Initial economic analysis presented to NWG indicates that the cost to local governments and to the private sector of even near-compliance with these numeric standards would greatly exceed associated, incremental benefits, even allowing for hard-to-define aesthetic benefits. Accordingly, it is critical for Montana to develop a rules that, while protecting Montana waters, are actually achievable at reasonable cost.
- It is not acceptable to most private or public sector sources to be at risk for non-compliance with adopted standards, subject only to the uncertain possibility of obtaining a variance at an unspecified time after costly case-by-case demonstrations. This concern is further complicated by the Montana's DEQ's acknowledged (legal) inability to assure protection of confidential financial information likely required to demonstrate "unaffordability" under EPA's past guidance for variances. It is critical that DEQ and individual sources be able to identify what will be required for compliance under rules up-front in permitting, and that such compliance be reasonably achievable, before base numeric standards are imposed.
- In consultation with the NWG, DEQ should develop a comprehensive framework of compliance steps and options, including nutrient levels achievable with commercially available technology over time. This may include technology-based effluent limit guidelines or available technologies to be applied for similar categories of sources on appropriate compliance schedules. Programmatic options for "trading" or "off-sets" that protect water quality in the most efficient way possible should also be considered.
- The NWG and DEQ should consider whether additional clarification in Montana legislation may be appropriate to assure implementation of a program that is practical, economic, and based on a solid legal foundation that enables realistic compliance by sources and timely application by DEQ.